



Council District Six
City of San Diego

MEMORANDUM

DATE: August 1, 2007

TO: Councilmember Jim Madaffer, Chair of the Land Use and
Housing Committee
City Attorney Michael Aguirre

FROM: Councilmember Donna Frye *Donna Frye*

SUBJECT: Criteria for Initiation of Amendments to Land Use Plans;
Municipal Code, Article 2, Division 1, Section 122.0103 (b) (4)

The above referenced Municipal Code Section allows appeal rights to an applicant whose request to initiate an amendment to a Land Use Plan is denied. However, it is silent on whether a member of the public may appeal if the decision is approved. This appears to limit the public's ability to participate in a municipal decision and denies them appeal rights if they oppose the initiation of an amendment to a Land Use Plan.

I am concerned that this section of the Municipal Code violates the law, in that it provides appeal rights to one party (the applicant), while denying, those same rights to others (the public).

I respectfully request that the City Attorney prepare language to amend the Municipal Code to allow appeal rights for all parties, not just the applicant.

Thank you for your attention to this matter. Your timely response is greatly appreciated.

CC:

DF/mk

Article 2: Land Use Plans

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

Division 1: Adoption And Amendment Procedures for Land Use Plans

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§122.0101 Purpose of Procedures for Adoption and Amendment of Land Use Plans

The purpose of these procedures is to standardize the review process for the adoption of new *land use plans* and the privately or publicly initiated amendment of adopted *land use plans*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§122.0102 When Review of Land Use Plans Is Required

Any planning or *development* proposal that would require adoption or amendment of a *land use plan* shall be reviewed in accordance with this division.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§122.0103 Initiation of Adoption or Amendment of Land Use Plans

Preparation of a new *land use plan* or amendment of an existing *land use plan* requires initiation by one of the following methods.

- (a) The City Council may, by resolution, direct the preparation of a new *land use plan* or an amendment to an applicable *land use plan*.
- (b) The City Manager or an *applicant* may request that the Planning Commission initiate an amendment to a *land use plan* by filing an application in accordance with Section 112.0102.
 - (1) The City Manager may recommend that a larger area than that proposed by the *applicant* be included in the proposed amendment.
 - (2) The Planning Commission may approve the request to initiate the amendment only if the Planning Commission determines that the application meets the criteria listed in Section 122.0104.
 - (3) The Planning Commission shall deny the request to initiate the amendment if they determine that the criteria listed in Section 122.0104 have not been met. If the request is denied, the Planning Commission

shall mail a notice to the *applicant* stating that the amendment has not been initiated. The notice shall be mailed to the *applicant* within 2 *business days* of the date of the Planning Commission's decision.

- (4) An *applicant* whose request to initiate an amendment has been denied may submit a written request to the City Clerk that the application to initiate be considered by the City Council. The *applicant* must submit the request no later than 10 *business days* after the Planning Commission's decision.
- (5) The City Council may initiate the amendment if it determines that the application meets the applicable criteria in Section 122.0104.
- (6) The City Council shall not initiate the amendment if it determines that the criteria in Section 122.0104 have not been met.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§122.0104 Criteria for Initiation of Amendments to Land Use Plans

- (a) Primary Criteria. An amendment to a *land use plan* may be initiated if any of the following criteria are met:
 - (1) The amendment is appropriate due to a map or text error or to an omission made when the *land use plan* was adopted or during subsequent amendments;
 - (2) Denial of initiation would jeopardize the public health, safety, or welfare; or
 - (3) The amendment is appropriate due to a material change in circumstances since the adoption of the *land use plan*, whereby denial of initiation would result in a hardship to the *applicant* by denying any reasonable use of the property.
- (b) Supplemental Criteria. If none of the primary criteria listed in this section are met, an amendment to a *land use plan* may be initiated if all of the following supplemental criteria are met:
 - (1) The proposed *land use plan* amendment is consistent with the goals and objectives of the Progress Guide and General Plan;